IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Atty. Docket:

Srinivas GUTTA   US010572

Serial No.: 10/014,202   Group Art Unit: 3622

Filed: November 13, 2001   Examiner: Daniel Lastra

Title: METHOD AND APPARATUS FOR RECOMMENDING ITEMS OF
INTEREST BASED ON PREFERENCES OF A SELECTED THIRD PARTY

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action mailed September 8, 2006,
Applicant requests review of the final rejection in the above referenced
application. No amendments are being filed with this request. This paper is
being filed with a notice of appeal and includes 5 pages of remarks.

**This review is requested for the reason(s) stated on the attached
sheet(s) .**

REMARKS

The Examiner's omissions of one or more essential elements needed for a prima facie rejection:

The Final Office Action rejects claims 1 and 3-23 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,758,257 to Herz.

Claim 1, upon which claims 3-6 (and new 24 which has been entered) depend, recites a computerized method performed by a data processor for recommending one or more available items to a target user. Claim 1, among other steps, recites "*partitioning* a third party selection history into a plurality of clusters". The Office has not established *prima facie* that Herz '257 teaches "partitioning a third party selection history into a plurality of clusters". Thus, the Office has not made a *prima facie* showing that claim 1 is anticipated by Herz '257.

The Office first asserts that col. 5, lines 24-54, and col. 49, lines 1-20, of Herz teach the partitioning step (*See* Final Office Action, page 3, lines 1-2). Applicant respectfully disagrees.

According to col. 5, lines 24-28 of Herz '257, a customer may have multiple profiles for representing the customer's changing preferences at various times of the day and of the week. The customer profile creating step may include:

> "*clustering customer profiles* for combinations of customers expected to view the video programs at a particular customer location at particular times on particular days." (emphasis added); See Herz, col. 5, lines 33-37.

As used in the context of Herz '257, the term "*clustering*" means *combining customer profiles* of a plurality of customers who are expected to view the video program at a particular time. Thus, "clustered profiles" means *combined* customer profiles. This is evidenced by the following example in Herz '257:

> "For example, the clustered profiles for a customer's residence may contain the *combined* profiles of Mom and Dad in the evening and the *combined* profiles of the

children in the afternoon." (col. 5, lines 37-40)

This example explains that col. 5, lines 33-37 refer to clustering or **combining** the individual customer profiles of **both** Mom and Dad (i.e., Mom and Dad are a combination of customers and their individual customer profiles are thus combined) expected to view video programs at their residence (i.e., a particular location) in the evening (i.e., at a particular time).

This point is further illustrated by a discussion at col. 49, lines 11-18 (incidentally also cited by the Office), which reads as follows:

> Also, since there is usually more than one television viewer in a household, it may be desirable to keep **multiple clusters** of preferences for one television. Those skilled in the art will appreciate that this may be handled in a manner similar to the different moods described above. For example, **the customer profiles of two or more customers may be combined**, with equal or unequal weightings, so that the video programming with content profiles strictly within the overlap area of the combined customer profiles will be preferred. In this manner, customers such as a husband and wife with very different preferences may be presented video programming options which are mutually agreeable. (emphasis added)

Furthermore, col. 34, lines 14-16 under the "C. Customer Clustering" heading explain that "Grouping customers **together** into customer clusters offers several advantages" (emphasis added). In this context, "Grouping" clearly means "combining".

To summarize Herz '257, **clustered profiles** are created by wholly combining selected individual profiles in accordance with, for example, the time of day that the **customers to whom the profiles are associated with are expected to watch some video programming together** (emphasis added). Having established that Herz '257 **only** discloses **combining** the customer profiles of two or more customers (i.e., Mom and Dad), claim 1 cannot be anticipated because

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Herz '257 is missing, among other patentable features, "partitioning the third party selection history into a number of clusters, as recited in claim 1."

Additionally, the Office Action cites col. 49, lines 1-20 (*See* Final Office Action, page 3, lines 1-2). Col. 49, lines 11-18 are already addressed above. However, the remainder, and in particular, lines 1-6, disclose that a customer may adopt the profiles of other individuals or celebrities. However, this passage also does not mention partitioning the viewing history, whether belonging to another individual or to a celebrity, into sets of clusters (of the third party selection history).

The Office further states in the first paragraph on page 3 of the Final Office Action that "According to Applicant's specification, a partition is equivalent to a cluster" referring by footnote 1 to page 7, lines 16-20 of Applicant's specification. Applicant respectfully disagrees and submits that Applicant's specification is mischaracterized. The name of the game is semantics. Page 7, lines 16-20 state as follows:

> The clustering process 500 partitions the third party
> viewing history 130 (the data set) into clusters, such
> that points (television programs) in one cluster are
> closer to the mean (centroid) of that cluster than any
> other cluster.

This passage does not mention and would not reasonably cause one to understand the passage as meaning "a partition is equivalent to a cluster", as asserted by the Office. The word "partition" as used by the Office, is a noun meaning "one of the parts of a whole", and is never used in Applicant's passage in that sense. Rather, Applicant's passage uses the word "partitions", which is a verb and indicates an act. The act is performed on a third party viewing history 130 (data set), resulting in clusters. In other words, according to the passage in Applicant's specification, a cluster is a result of the act of partitioning, and is therefore **not** an equivalent of the act of partitioning. Applicant specifically claims "partitioning", and Herz '257 only teaches "combining". It is believed that the Office mischaracterizes Applicant's specification as stating "a partition is

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equivalent to a cluster" in order to establish that the "clustering" used by Herz is equivalent to the claimed "partitioning" step.

The Office also states that "Herz teaches clustering (*i.e.* **partitioning**) the profiles of third party persons viewing history *and combining* the viewing profiles of two or more customers" (emphasis added). The Office cites col. 38, lines 1-55 in footnote 2 for the alleged teaching of "partitioning" and the Office cites col. 49, lines 1-20 in footnote 3 for the alleged teaching of "combining" the viewing profiles of two or more customers. The Office's position is inconsistent with its earlier citation (as discussed above) of col. 49, lines 1-20 allegedly teaching partitioning because the Office also cites col. 49, lines 1-20 in footnote 3 as allegedly teaching combining. (*see* page 3 of Final Office Action and *compare* col. 49 reference at line 2 to col. 49 reference to footnote 3 of lines 4-7).

Furthermore, col. 38, lines 1-55 do not teach partitioning. Those lines only disclose clustering which is not the same as partitioning. Also, the "clustering" and "combining the viewing profiles of two or more customers," mentioned by the Office, is one and the same. The cited lines at col. 38 only teach determining initial profiles for new customers, a discussion which is actually started at col. 37, lines 64-67. Clustering is defined as a way of determining an initial customer profile (col. 38, lines 18-20). In one use of clustering, customers are grouped so that people have who have watched more movies or shows in common are more likely to be in the same group (col. 38, lines 42-47). Thus, customers and their respective customer profiles are combined as part of clustering. Customer profiles are combined rather than partitioned.

Col. 38, lines 5-12 refer to determining an initial customer profile by clustering movies watched into groups for selection of a centroid (average) of each group. Thus, this section discloses grouping together (i.e., combining in this context) movies watched and then averaging. Partitioning is not disclosed in these lines or anywhere else in col. 38.

Independent claims 14, 17, 22, and 23 have been rejected on the same

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grounds as claim 1 and are therefore patentable for at least the reasons described above.

Independent claim 7 is treated separately in the Office Action, but recites the same limitation of "partitioning a third party selection history into a plurality of clusters". Independent claim 18 is treated with claim 7, and similarly recites a "processor configured to: partition a third party selection history into a plurality of clusters". In this part of the Final Office Action (page 4, bottom paragraph), the only citation that seems of relevance is col. 34, lines 57-60, which reads "As noted above, the purpose of clustering is to group objects with high similarity into clusters." The term "group" means to combine in this context. Again, Herz '257 does not disclose "partitioning".

In summary, the Office is believed to have mischaracterized Applicant's specification and tries to rewrite Herz '257 as teaching partitioning, whereas Herz '257 only teaches wholly combining customer profiles. This is gross error. Because Herz '257 fails to teach each element of each independent claim, Applicant respectfully maintains that the Office has failed to provide the essential elements required for a *prima facie* rejection, and respectfully submits that the claims are in condition for allowance.

Respectfully submitted,

/Yan Glickberg/

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